

CAUSE NO. DC-13-12383

CARLOS H. PALOMO, JR.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
V.	§	
	§	
TOPGOLF USA PARK LANE RANCH,	§	
L.L.C.,	§	
	§	
TOPGOLF INTERNATIONAL, INC.,	§	
	§	
TOPGOLF USA, INC.,	§	OF DALLAS COUNTY, TEXAS
	§	
GOLF RANGE NETTING, INC.,	§	
	§	
PRAXIS3, P.C.,	§	
	§	
AND	§	
	§	
MIGUEL YELOS SAN MARTIN,	§	
	§	
DEFENDANTS.	§	162ND JUDICIAL DISTRICT

PLAINTIFF’S THIRD AMENDED PETITION
WITH CERTIFICATE OF MERIT

TO THE HONORABLE JUDGE OF THIS DISTRICT COURT:

NOW COMES Plaintiff Carlos H. Palomo, Jr., and files his *Third Amended Petition and Requests for Disclosure* complaining of (1) Defendant TopGolf USA Park Lane Ranch, L.L.C.; (2) Defendant Topgolf International, Inc.; (3) Defendant Topgolf USA, Inc.; (4)

¹ Hereinafter, “TopGolf Defendants” refers collectively to (1) Defendant Topgolf USA Park Lane Ranch, L.L.C.; (2) Defendant Topgolf International, Inc.; and (3) Defendant Topgolf USA, Inc.

Defendant Golf Range Netting, Inc., (5) Defendant Praxis3, P.C., and (6) Defendant Miguel Yelos San Martin; and would show the Court the following:

I.
DISCOVERY CONTROL PLAN

1. Plaintiff seeks to conduct discovery under Level 3 of TEXAS RULES OF CIVIL PROCEDURE and affirmatively pleads that this suit does not fall under the expedited-actions process of TEXAS RULE OF CIVIL PROCEDURE 169.

2. Plaintiff pleads that he seeks monetary relief in excess of \$1,000,000.

II.
PARTIES

1. Plaintiff Carlos H. Palomo, Jr., is an individual, has Appeared, and may be contacted through his counsel.

2. Defendant TopGolf USA Park Lane Ranch, L.L.C., is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. This Defendant has been served and has Answered by Counsel.

3. Defendant Topgolf International, Inc., is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. This Defendant does not have a Registered Agent in Texas. This Defendant has been served and has Answered by Counsel.

4. Defendant Topgolf USA, Inc., is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. This Defendant does not have a Registered Agent in Texas. This Defendant has been served and

has Answered by Counsel.

5. The TopGolf Defendants often hold themselves out to the public without distinction between any entities. Variations of the core name appear as “TopGolf,” “Top Golf,” and “Topgolf.” As a result, the entities are often referred to as each other, and with A/K/A’s to include: TopGolf, Topgolf; Top Golf; Top Golf Dallas; TopGolf Dallas; Topgolf Dallas; Top Golf USA; TopGolf USA; Topgolf USA; Top Golf USA, Inc.; TopGolf USA, Inc.; Topgolf USA, Inc.; Top Golf International; TopGolf International; Top Golf International, Inc.; TopGolf International, Inc.; and Topgolf International, Inc.

6. Defendant Golf Range Netting, Inc., is a Florida corporation. This Defendant does not have a Registered Agent in Texas. This Defendant has been served and has Answered by Counsel.

7. Defendant Praxis3, P.C., is a foreign corporation organized and existing under the laws of the State of Georgia. This Defendant has been served and has Answered by Counsel.

8. Defendant Miguel Yelos San Martin is an architect licensed in Texas (16647). Defendant Yelos San Martin is a non-resident of Texas. This Defendant has been served and has Answered by Counsel.

9. Defendant Praxis3 and Defendant Yelos San Martin are hereinafter collectively referred to as “Defendant Architects.”

III.
VENUE AND JURISDICTION

1. Venue is proper in Dallas County pursuant to § 15.001, *et seq.*, of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or part of the causes of action accrued here, and because the TopGolf Defendants are headquartered here.

2. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

3. Neither venue nor jurisdiction have been challenged in this matter.

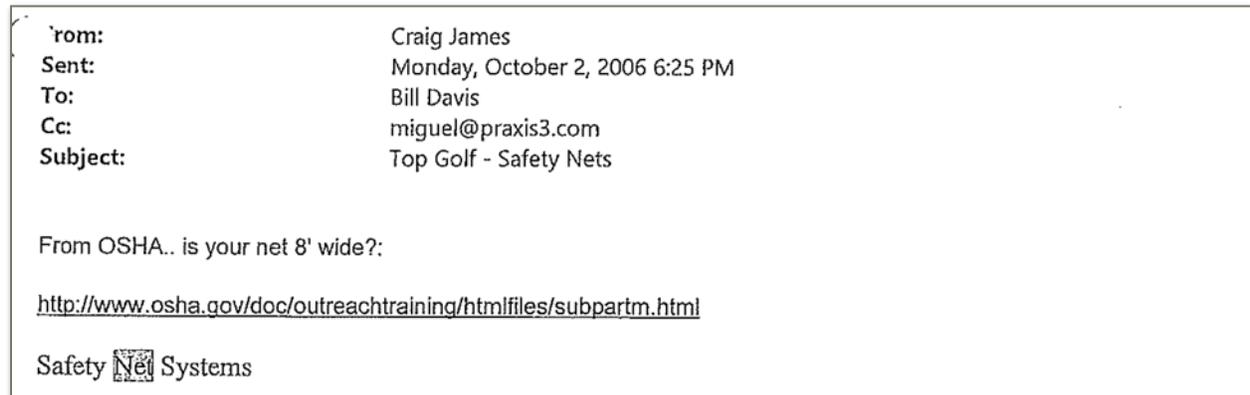
IV.
FACTS

1. On the morning of August 25, 2013, Plaintiff, an active-duty member of the United State Air Force, was a paying customer at the TopGolf Defendants' location at 8787 Park Lane in Dallas. A misstep caused a foot to go into the fall-arrest netting system which included fall-arrest netting of 3'6" — less than half the extension distance of the OSHA standard of 8 feet. The fall-arrest netting failed to arrest his fall, and Plaintiff fell to the ground below. Plaintiff suffered injuries of life-changing magnitude.

2. He is expected to suffer with pain and impairments for the rest of his life.

3. His medical needs are expected to be life-long.

4. Documents produced by the Defendant Architects show that, prior to the location's opening, the Defendant Architects were acutely aware that they were constructing a safety net system that in no way complied with OSHA's standards:



5. Further documents produced by the Defendant Architects show that, prior to the location's opening, show communications between the Defendant Architects and Kevin Miner (then an employee of the TopGolf Defendant's agent, but now an Executive for the TopGolf Defendants), net suppliers were refusing to provide nets because they were so clearly noncompliant with OSHA standards:²

² Wavy lines indicate abridged sections of the emails.

From: Bill Davis
Sent: Wednesday, April 4, 2007 12:18 PM
To: Kevin Miner
Subject: RE: Praxis items for Dallas
Attachments: 1111.pdf; 1.pdf; SentryGate%204%20Data%20Sheet.pdf

Kevin-
My responses, below in ALL CAPS

Bill Davis
404 875 4500 x 7426
praxis3 architecture planning design

-----Original Message-----

From: Kevin Miner [<mailto:kminer@kempersports.com>]
Sent: Tuesday, April 03, 2007 2:05 PM
To: Bill Davis
Subject: Praxis items for Dallas
Importance: High

Bill:

5.

Safety nets and cables (I'm not sure where the ball is on this item. Have cables and netting been specified? Teal doesn't have anything right now.)[Bill Davis] BECAUSE OF THE OSHA REGS, NO COMPANY IS WILLING TO SPEC THIS TUFF. THE STEEL SHOULD ALREADY HAVE EXTENDED HORIZONTALS TO ACCOMMODATE THE NETTING. BOTH JOE AND I HAVE FOUND A NUMBER OF PRODUCTS/VENDORS THAT WOULD APPEAR TO DO THE JOB- I WILL FORWARD LINKS TO THEIR WEB SITES. BOTTOM-LINE: SOMEONE IS GOING TO HAVE TO SPECIFY/PURCHASE THIS STUFF...HOW DID YOU GET IT DONE IN KT?

Thanks.

Kevin Miner
Project Manager
KemperSports Development
3912 Maximilian CT
Fairfax, VA 22033
703-798-0729
www.kempersports.com <<http://www.kempersports.com/>>

6. Kevin Miner's answer to the Defendant Architect's question — *how did a non-complaint net get approved in KT [Kingstowne, Virginia]*? That they merely took over a preexisting property and have no idea how it got approved:

IT DONE IN KT? [kevin] steel in dallas does have the horiz extensions. peter confirmed this yeseterday. second deck and safety netting were pre-existing at kingstowne. all we added was roof, so i don't know who did it.

7. The Defendant Architects considered the fall-safety net's short design suitable only for reliably arresting the falls of any children:

From: Bill Davis <bdavis@praxis3.com>
To: Zinah Hall <zhall@pesengineers.com>
CC: Michael Planer <mplaner@pesengineers.com>
Sent: Wed Jan 10 17:00:43 2007
Subject: TopGolf Dallas - foundations?

Zinah-

I didn't hear back from you, yesterday...how are things coming with the foundation design? Do you think we'll have it by the end of the week?

Also, can you tell me what design loads you used for the 'kid catcher' design at the open edge of the tee-line?

Thank you-

Bill

8. And though several vendors refused to provide a net that was so clearly non-compliant, Defendant Golf Range Netting did anyway.

9. Heavily redacted emails produced by a non-party, *not* by the TopGolf Defendants, show that the TopGolf Defendants knew that their tee line area and fall-arrest

safety netting system was untested and not in compliance with expressly referenced standards despite the recommendation of their loss control specialists and insurance company. The emails are dated 21 days before Plaintiff's tragic injuries:

-----Original Message-----

From: Stellakis, Lee
Sent: Tuesday, August 06, 2013 8:35 AM
To: Dominic Crespo; Gaw, Mike; Andy Henning; Lance Smith
Cc: Kevin Miner
Subject: RE: SRPMIC Update

As it relates to the guardrail code, attached is the section referenced in the IBC2009. This is kind of a dead end as it basically doesn't describe any specific exceptions for our use. I know somewhere in the OSHA code there is some language about netting systems. I will pull that and see what it says. I think no matter how we slice it we may need to apply for a variance. Mike/Dom, one of the things I think would be prudent while you are in town is to determine what the variance process is like

Thanks,

-----Original Message-----

From: Gaw, Mike [mailto:mgaw@arcomurray.com]
Sent: Tuesday, August 06, 2013 9:00 AM
To: Stellakis, Lee; Dominic Crespo; Andy Henning; Lance Smith
Cc: Kevin Miner; Palutsis, Eric
Subject: RE: SRPMIC Update

Here's the info on the OSHA safety netting, essentially an 8' net is the requirement (see table). A few highlight points below:

- Maximum mesh size must not exceed 6 inches by 6 inches. All mesh crossings must be secured to prevent enlargement of the mesh opening, which must be no longer than 6 inches, measured center-to-center.
- The drop test consists of a 400 pound bag of sand 28-32 inches in diameter dropped into the net from the highest surface at which employees are exposed to fall hazards, but not from less than 42 inches above that level.

-----Original Message-----

From: Kevin Miner
Sent: Tuesday, August 06, 2013 9:20 AM
To: Helen Irizarry
Subject: Teeline safety netting

Just forwarding this to you for your reading pleasure...

The plan reviewing agency in Scottsdale has raised a question with regard to our fall netting. We have only once ever been asked to justify our fall netting design, and what we submitted then (in Houston I think) was accepted. That said, there is no provision for a variance from the guardrail requirements. If someone wanted to hold us to the letter of the IBC law, we would have to have guardrails on our teeline - which would operationally preclude us from development. The only thing we have been able to find in any code about fall netting is an OSHA standard about working from heights. It specifies that the net must project 8' from the edge of the slab - which is also operationally prohibitive.

In any case, we are all VERY interested to see how this plays out in Scottsdale.

W. Kevin Miner
Director of Construction
TopGolf
p: 703.798.0729

From: Dominic Crespo
Sent: Tuesday, August 06, 2013 11:43 AM
To: Lee Stellakis; Mike Gaw
Cc: Kevin Miner
Subject: Fwd: Teeline safety netting

Lee/Mike,

I'm forwarding you some additional comments on the fall fall protection from our loss control inspections that we recently had on one of our sites. Please read the email thread below and we can touch base when I get to the jobsite. We are driving out right now into the middle of the desert so that we can get our rental cars. Be there as soon as I can.

Dominic J. Crespo
Sr. Project Manager
TopGolf
972.730.7536

From: Kevin Miner [mailto:Kevin.Miner@topgolf.com]
Sent: Tuesday, August 06, 2013 11:47 AM
To: Dominic Crespo; Stellakis, Lee; Gaw, Mike
Subject: RE: Teeline safety netting

Gents:

Helen mentioned that this was a recommendation from the insurance company, not a mandate. Let's discuss as a team how we could perform the testing if we wanted to. I know I'm not lifting 400# of anything.

W. Kevin Miner

Director of Construction

TopGolf

p: 703.798.0729

10. If the emails should be interpreted such that the TopGolf Defendants were never advised of these standards at the time of the property's design, then the TopGolf Defendants were failed by the Defendant Architects and their then-agent, and current-Executive, Kevin Miner.

11. The emails must be interpreted to confirm that, before the property ever opened, the Defendants all actually knew that their short net was an unlawful shortcut.

12. And they must be interpreted as proof that, weeks before Plaintiff's severe injuries, the TopGolf Defendants were reminded that their tee line area and fall-arrest safety

netting system was untested and not in accord with the standards at issue.

13. But, rather than closing the upper-deck to customers until such testing could be completed and the property renovated, the TopGolf Defendants continued to profit off of customers who were never warned that TopGolf's safety net was induced customers to the tee-line with the illusion of safety, though the Defendants all knew otherwise.

14. To exacerbate the risks even worse, the TopGolf Defendants showed terrible judgment in the choice of employees and in the training of those employees. Yet the TopGolf Defendants tasked those employees with ensuring the safety of its guests. For example, the bartender at issue in this case was named Enrique Arochi. One former TopGolf employee has confirmed that this is the same Enrique Arochi who is allegedly shown in a video known to every resident of Dallas & Fort Worth. In that video, an Enrique Arochi is walking with Christina Morris through a parking lot. That Enrique Arochi is charged with aggravated kidnapping of Christina Morris, who is now feared murdered at his hands. He is also is charged with aggravated sexual assault of a child.

V.
CAUSES OF ACTION

1. The TopGolf Defendants were responsible for the maintenance, set-up & safety of the site and for the safety of their customers. The TopGolf Defendants are liable for their failures via negligence; negligent undertaking; negligence *per se*; and premises liability. And through fraud and negligent misrepresentation. They are further liable via negligent hiring, retention, training, and supervision; and for the failure to promulgate and enforce policies, procedures, and rules to protect its customers and employees.

2. Defendant Golf Range Netting sold some portion of the fall-arrest netting system which did not succeed in arresting the Plaintiff's fall. Liability includes negligence, negligent undertaking, and breach of warranties.

3. The Defendant Architects are liable to Plaintiff for negligence and negligent undertaking.

4. The Defendant Architects breached legal duties owed to Plaintiff by (a) designing a tee line area and fall-arrest safety netting system that included a fall-arrest net that was a mere half the size of the minimum standard for a fall-arrest net, (b) undertaking to design a tee line area and fall-arrest safety netting system intended to protect persons such as the Plaintiff and failing in the design, (c) approving via "stamp" a design the Defendant Architects knew, or should have known, did not meet standards and was untested, (d) in the event that the TopGolf Defendants had an arguable right to choose the implemented design, failing to advise the TopGolf Defendants of alternative designs and necessary testing, (e) or a combination thereof.

5. The Defendant Architects designed the tee line area & fall-arrest netting in a way that deviated from accepted architectural standards in a manner that rendered the tee line area & fall-arrest netting unreasonably dangerous to customers and employees.

6. In light of their training, the Defendant Architects should have known of the risks associated with the dangerous design of the tee line area & fall-arrest netting.

7. The Defendant Architects undertook to perform services that its employees knew or should have known were necessary for the protection of members of the public, such as the Plaintiff, who were expected to visit the property.

8. The Defendant Architects are liable for premises liability, in that they designed the tee line area and fall-arrest netting system in a manner that created an unreasonably dangerous condition, which posed an unreasonable risk of harm to the patrons, including the Plaintiff. The Defendant Architects failed to warn Plaintiff of the hazardous condition and failed to protect him from it by making the condition safe.

9. The above-referenced acts and omissions were a proximate cause of the Plaintiff's fall and resulting injuries.

VI. RECKLESS CONDUCT

1. Per the Restatements, an actor who intentionally or recklessly causes physical harm is subject to liability for a broader range of harms than the harms for which the actor would be liable if only acting negligently.

2. In general, the important factors in determining the scope of liability are the moral culpability of the actor, as reflected in the reasons for and intent in committing the

tortious act, the seriousness of harm intended and threatened by those acts, and the degree to which the actor's conduct deviated from appropriate care.

3. Pleading in the alternative, Plaintiffs show that the acts and omissions of the Defendants, separately and collectively, constitute recklessness. Defendants knew of the risk of harm created by the conduct, or knew facts that made the risk obvious to another in the person's situation, and the precautions that would have eliminated or reduced the risk involved burdens that were so slight relative to the magnitude of the risk as to have rendered the Defendants' failures to adopt the precautions a demonstration of the Defendants' indifference to the risk.

VII. GROSS NEGLIGENCE

1. Plaintiff would show that the acts and omissions of the Defendants constitute gross negligence. The Defendants acted with willful, wanton disregard, both before and at the time of the incident in question, given the extreme degree of risk of potential harm to others, of which the Defendants were aware, and yet proceeded with the acts and omissions described above with conscious indifference to the rights, safety or welfare of others, including Plaintiff. Accordingly, Plaintiff seeks an award of exemplary damages against the Defendants.

2. The TopGolf Defendants have shown no remorse. To the contrary, they continue to ratify their torts, have directly hired Kevin Miner, violate CPRC § 33.013(b)(2) (L), have sought to suppress Plaintiff's Open Records inquiries to governmental entities, and have retained businesses and entities for the purpose of misleading governmental entities.

3. The TopGolf Defendants yet to close any upper-levels of any of their properties, nor have they fundamentally changed the design of the tee line area and fall-arrest safety netting systems at any of their projects underway.

VIII. DAMAGES

1. As a result of the Defendants' torts, Plaintiff incurred medical expenses in the past and Plaintiff's medical expenses will continue in the future.

2. As a result of the Defendants' torts, Plaintiff incurred pain and suffering in the past, and Plaintiff's pain and suffering will continue in the future.

3. As a result of the incident described herein, Plaintiff incurred mental anguish in the past, and Plaintiff's mental anguish will continue in the future.

4. As a result of the Defendants' torts, Plaintiff incurred physical impairment in the past, and Plaintiff's physical impairment will continue in the future.

5. As a result of the Defendants' torts, Plaintiff incurred physical disfigurement in the past, and Plaintiff's physical disfigurement will continue in the future.

6. As a result of the Defendants' torts, Plaintiff experienced lost earnings and earning capacity in the past, and Plaintiff's diminished earnings & earning capacity will continue in the future.

IX.
JOINT & SEVERAL LIABILITY

1. The TopGolf Defendants are each liable for the acts of the others via joint enterprise and agency.
2. All Defendants are each liable for the acts of the others via non-delegable duty.
3. All Defendants are each liable for the acts of the others via assisting & encouraging; assisting & participating; concert of action; conspiracy via gross negligence (per *Jubl v. Arrington*, 936 S.W.2d 640, 644 (Tex. 1996); or a combination thereof.

X.
CERTIFICATES OF MERIT

1. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §150.002, Plaintiff hereby files the *Certificate of Merit* attached as *Exhibit A*, which is incorporated as if set forth in their entirety herein.
2. With regard to the Affidavit, the Affiant is competent to testify, holds the same professional license or registration as the Defendant Architects referenced, is knowledgeable in the area of practice of the referenced Defendant Architects, and offers testimony based on knowledge, skill, experience, education, training, and practice.

XI.
CLAIM FOR PREJUDGMENT AND POST-JUDGMENT INTEREST

1. Plaintiff seeks interest in accordance with TEXAS FINANCE CODE § 304.001, *et seq.*

XII.
REQUESTS FOR DISCLOSURE

I. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff's prior request is hereby maintained from the original deadline: all Defendants are requested to disclose and produce to Plaintiff, within 50 days of service of this Request, the information and materials described in RULE 194.2, through his attorneys at LENAHAN LAW, P.L.L.C., 2655 Villa Creek, Suite 204, Dallas, Texas 75234, during normal business hours.

XIII.
PRAYER

WHEREFORE, Plaintiff prays that the Defendants be cited to *Appear* and *Answer* and, upon final trial, that Plaintiff have *Judgment* against the Defendants for actual damages, for costs of suit, pre-judgment and post-judgment interest, and for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,



Marc C. Lenahan
State Bar No. 24007546
Law@Lenahan.com
Thomas B. Cowart
State Bar No. 00787295
Tom@Lenahan.com
LENAHAN LAW, P.L.L.C.
2655 Villa Creek, Suite 204
Dallas, Texas 75234
214.295.1008
214.295.2664 fax

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon counsel of record in accordance with the RULES OF CIVIL PROCEDURE on the 1st day of April, 2016, as follows:

Douglas D. Fletcher

via e-service

Alex J. Bell

FLETCHER, FARLEY, SHIPMAN & SALINAS, L.L.P.

9201 North Central Expressway

Suite 600

Dallas, Texas 75231

Bianca Cedrone

via e-service

Willie Ben Daw, III

DAW & RAY, L.L.P.

5718 Westheimer, Suite 1750

Houston, Texas 77057

M. Brandon Waddell

via e-service

Bryan Pope

VINCENT LOPEZ SERAFINO JENEVEIN, P.C.

1601 Elm Street, Suite 4100

Dallas, Texas 75201



Marc C. Lenahan

Exhibit A

2. “This Affidavit is submitted pursuant to the requirements of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Section 150.002, with respect to the architectural services provided by the Praxis3, P.C., and Architect Miguel Yelos San Martin, as they relate to the design and construction of the tee line area and fall-arrest safety netting system at the TopGolf location on Park Lane in Dallas, Texas.

3. “The testimony offered in this affidavit is based on my knowledge, skill, experience, education, training, and practice.

4. “I am a licensed professional architect, registered and licensed to practice in the State of Texas. I have worked in the architectural field since 1989, and have been a registered architect since 2003. I am currently actively engaged in the practice of architecture as a Senior Consultant and Forensic Architect for Engineering Systems Incorporated. I am a Registered Architect in the following states and with the license numbers as indicated:

State of Texas - 22534
State of Illinois - 001-018822
State of Wisconsin - 9600-5
State of Pennsylvania - RA405526
State of Florida - AR95852
State of South Carolina - AR 8506
State of Iowa - 06531
State of Arkansas - 4772
State of Nebraska - A4471
State of Colorado - ARC.00404017
State of Indiana - AR11500115.

5. “My NCARB license number is 71608. My Interior Designer license number in the State of Illinois is 161003474.

6. “During my career, I have performed architectural design and planning work on a wide variety of product types. My work experience includes multi-family; mixed-use; retail; commercial; institutional; industrial; single-family; and code, safety & accessibility compliance. My work also includes forensic architecture & investigations.

7. “A true and correct copy of my *curriculum vitae* is attached hereto as *Exhibit B*, and is incorporated by reference for all purposes.

8. “By virtue of my knowledge, skill, education, training, professional experience and practice, I have personal knowledge of the generally acceptable standards for the practice of architectural services in the State of Texas. Likewise, I am knowledgeable in the areas of practice of Praxis3, P.C., and Architect Miguel Yelos San Martin. Per my understanding of the case and my review of plans provided me, Miguel Yelos San Martin was an architect licensed in Texas (#16647), was the architect of record for the TopGolf at Park Lane project,

and served in his capacity as a principal or employee of Praxis3. I hold the same Texas license and/or registration as Miguel Yelos San Martin and the agents or employees of Praxis3 who were licensed to engage in the practice of architecture in connection with the design of the TopGolf property on Park Lane in Dallas.

9. “In connection with my analysis of this matter, I reviewed documents and information including:

- a. A draft of the *Second Amended Petition*;
- b. Plans identified as ‘Top Golf, Dallas, TX Revision #6, 06-11-2007;’
- b. Documents produced by ARCO/Murray National Construction Company, Inc., which include many emails between ARCO/Murray and TopGolf, with such emails including the ones depicted in the *Second Amended Petition*;
- c. Documents produced from Loudoun County for a different TopGolf project there, which include plans, emails, reports, and correspondence discussing standards for the tee line and safety net system issues;
- d. An Order in Case No. BOAB-2014-00022, before the Board of Appeals of the City of Oklahoma City, Oklahoma, relating to a TopGolf Project there; and also documents signed and stamped by a registered professional engineer in the employment of Consulting Engineers, Corp.;
- e. Over 200 photos of the TopGolf location on Park Lane in Dallas; and
- f. Various YouTube videos purportedly depicting the TopGolf location on Park Lane in Dallas.

10. “Also included in the materials I reviewed are portions of the following codes and standards:

- a. OSHA 1910 & 1926;
- b. International Building Code;
- c. International Fire Code;
- d. NFPA 101: Life Safety Code;
- e. ANSI/ASSE A10.11 1989 & 2010;
- f. Appendix B to Subpart M of OSHA 1926;
- g. State of Texas Accessibility Standards;

- h. AMERICAN WITH DISABILITIES ACT (ADAAG);
- i. 2010 ADA Standards;
- j. Dallas Fire Code;
- k. Dallas Amendment to IBC;
- m. International Property Maintenance Code;
- n. Golf Range Netting's website; and
- o. *Rules and Regulations* of the Texas Board of Architectural Examiners, TEXAS ADMINISTRATIVE CODE, Title 22, Part 1, Chapter 1; and
- p. TEXAS OCCUPATIONS CODE, Title 6, Article 1.

11. "It is my understanding that, on August 25, 2013, the Plaintiff fell from the 'tee line' deck of Bay 60 on the second story of the TopGolf location on Park Lane in Dallas, landed on the range below, and suffered severe injuries.

12. "It is my understanding that there are no allegations that the fall-arrest safety net at the tee line structurally failed; *i.e.*, there are no indications that the net ripped, that a cable snapped, that a weld failed, *etc.* It is my understanding that the netting system was undamaged and unchanged in any noticed way in the course of the event. It is also my understanding that there are no allegations that the tee line area and fall-arrest safety netting system were built in a way that deviated from the Defendant Architects' plans in any material way. Rather, in comparing the plans to the photos, it appears that the construction was per the plans' design.

13. "It is my understanding that the Plaintiff first misstepped into the netting system, that he touched the cable that is the far edge of the netting system during the fall, and that the cable is about 3'7" from the edge of the tee line deck.

14. "An edge such as the one at the tee line deck would ordinarily be protected by a guardrail system. Because a guardrail system would not permit the golf range activity, the task for the Defendant Architects was to design or recommend an alternative material, design, or method that was at least the equivalent of a guardrail system in terms of quality, strength, effectiveness, fire resistance, durability and safety. (IBC 104.11.) If the Defendant Architects could not create such a design, their options included retaining assistance or withdrawing from the project. And any deficiencies appreciated by the architect must be documented for the client. 'During the delivery of a professional service, an Architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent architects practicing under similar circumstances and conditions.' 22 TEXAS ADMINISTRATIVE CODE § 1.142.

15. “Two of TopGolf’s positions are known because fundamentally similar tee line areas and fall-arrest safety netting systems (with nets of up to four feet) have been questioned by governmental entities at other TopGolf locations, and Topgolf responded with documentation stating those positions.

16. “The first position is that an 8-foot fall-arrest safety net design per OSHA construction regulations would pose an unworkable risk in the TopGolf context. This position is stated in greater detail in a report signed on February 15, 2014, by Dave Tanner of the Tanner Consulting Group. It appears that Mr. Tanner wrote the report after the accident. It also appears that TopGolf retained him to do so. As he says within the report, he was ‘contacted by Ms. Helen Irizarry, Risk Manager for TopGolf, and asked to review the catch netting at TopGolf golf centers.’ I understand that the report was provided to a governmental entity evaluating a TopGolf location in Oklahoma City, Oklahoma:

While it would be easy to recommend additional netting be extended beyond the current depth in an attempt to provide more safety, the design does not prove to be conducive with a driving range tee. Golfers use multiple golf clubs that vary in trajectory levels to meet the demands a golf course will put on a golfer. A practice range facility gives beginning golfers an area to hone their skills while helping experienced golfers master their capabilities within a fenced area. In order for a golf practice facility to be of value to their clientele, the golfers must be able to utilize all the clubs in their bags. If netting extends out further than its current depth, golfers hitting from tees below will easily be able to strike the netting and cabling above. This could cause a safety hazard as the ball could possibly bounce backwards in the direction of the public.

And:

There are many more golf facilities throughout the US and in many foreign countries that utilize this same design. To the best of our knowledge, we are not aware of any multi-tier driving ranges with 8 foot catch netting. The major problem with extending the netting beyond the four feet is that the netting and cabling become even more of a hazard to the golfers when they practice with their higher lofted clubs. The number of balls will bounce back at the golfers create a extreme hazardous condition. See next two images.

17. “The second position is also articulated in the report of the Tanner Consulting Group: that a system that *combines* a 4-foot (or less) net with a buffer zone of a player positioned four feet from the edge, is the functional equivalent of an 8-foot net:

A golf range tee structure is certainly different then a construction site. The tee stalls are consistent from site to site and the tee locations are consistently positioned eight feet from the far edge of the safety catch net on the main level and are nine feet from the far edge of the safety catch netting on the upper level. This allows an area of eight to nine feet of safety in the event a golfer was to fall over to his side towards the range area. We certainly feel that the eight to nine feet of safety area is consistent with the intent of the OSHA regulation.

Upon completion of our review, we find the current catch netting system at the TopGolf site we reviewed meets or exceeds the design and strength recommendations of OSHA. Providing golfers abide by the rules and regulations spelled out in the contract they sign before start of play, safety with regards to the catch netting should not be an issue. Proper tee positioning will also enhance safety. I would recommend keeping your tee placements where they currently are located. It is our opinion the TopGolf facility at the Arizona Facility meets industry standards and is consistent with the standards of the industry.

18. “With regard to the position that an 8-foot net would pose an unworkable safety hazard, I disagree and have every expectation that an architect and architectural firm with the Defendant Architects’ skills & resources could have designed an 8-foot netting system, or a functional equivalent, that would (a) not pose the risks Mr. Tanner describes, and (b) from which the Plaintiff could have emerged with zero injuries other than slight abrasions.

19. “With regard to the second position — that a system that *combines* a 4-foot (or less) net with a player positioned four or more feet from the edge, is the functional equivalent of an 8-foot net — I also disagree as applied to the TopGolf tee line. At TopGolf, there is nothing protecting a player from intentionally or inadvertently coming considerably closer than four feet to the deck edge, thereby reducing or totally eliminating the buffer zone distance the Tanner Report contemplates. Relying on providing a customer or employee a warning or training as to the edge is no more effective here than in a construction site where it is not permitted. Contrary to Mr. Tanner’s assertion, a ‘contract’ is not a safety feature for the player. It is intended as a safety feature only for TopGolf’s liability.

20. “The Defendant Architects had a duty to their clients and to the future customers and employees of TopGolf to advocate these same concerns, document them, and suggest alternatives.

21. “I note that if Mr. Dave Tanner is either an architect, engineer, or landscape architect, those credentials do not appear on the report.

22. “I also note that concerns similar to mine have been expressed by public servants tasked with evaluating TopGolf’s netting designs:

From: Hundley, Michael [mailto:Michael.Hundley@SRPMIC-nsn.gov]
Sent: Monday, February 10, 2014 4:14 PM
To: Gaw, Mike; Williams, Mark (ECS); Hesselgesser, Jake <Jake@brown-and-associates.net>;
Dockerty, Randy
Cc: Dominic Crespo
Subject: RE: TGR - Permit Meeting Follow-up

Mr. Gaw,

ECS Compliance is in agreement that the use of OSHA Standard 1926.105 is an acceptable alternate to the IBC prescribed guardrail system however the netting system needs to start at the edge of the deck and extend out a minimum of eight feet to fully comply with the cited standard as opposed to the four foot extension proposed. The netting system is to be provided with a label of proof test and the supporting elements will require appropriate structural design documentation. The operator shall also acknowledge their obligation to maintain the netting system at all times and not on a pre-determined schedule as a pre-determined schedule may or may not be suitable for the site specific climate conditions. ECS Compliance does not want to be in a position to dictate a frequency of testing and/or replacement and would only be responsible for seeing that the system was installed and receiving documentation that the initial installation complies with OSHA Standard 1926.105.

If you have any question or wish to discuss this issue further, please feel free to contact me.

Thanks,

Mike Hundley

And:



Loudoun County, Virginia

SCANNED

**Department of Building and Development
Code Enforcement Division**

1 Harrison Street SE MSC 60B, PO Box 7000 MSC 60B, Leesburg, VA 20177-7000
Inspection Information: 703-777-0220 Fax: 703-737-8546

June 4, 2014

TopGolf
Randy Starr, Chief Development Officer
1717 McKinney Avenue
Suite 800
Dallas, TX 75202

Mr. Starr:

Thank you for your response regarding the proposed TopGolf facility in Ashburn, VA.

The "red line" is not adequate to prevent occupants from accessing the hitting bays. Your structure is classified as an A-2 (Restaurant/Nightclub) with an occupancy load exceeding 1000 and is not a typical driving range. There is no barrier to protect the "event" occupants from the open-sided floor.

The previously submitted tee-line fall protection letter dated April 17, 2014 references the Tanner Study which included a list of 11 golf driving ranges and industry standards. Ten of the 11 golf driving ranges listed do not have the A-2 classification use adjacent to the hitting bays.

There is no exception in the 2009 International Building Code, Section 1013-Guards, addressing this condition. The 4' nets are unacceptable. The nets are not addressed in the 2009 International Building Code or OSHA as equivalent substitutes for guard rails.

At this time we feel the requirement for guard rails shall be in compliance with 2009 International Building Code, Section 1013-Guards, 1013.1.

You have the right to appeal this decision in accordance with the 2009 Virginia Uniform Statewide Building Code, Section 119.5 Right of appeal; filing of appeal application.

Sincerely,

Mr. Stephen McCann
Structural Engineer

SM:sbr

And:



Loudoun County, Virginia

**Department of Building and Development
Code Enforcement Division**

1 Harrison Street SE, PO Box 7000 MSC 60B, Leesburg, VA 20177-7000
Inspection Information: 703-777-0220 Fax: 703-737-8546

SCANNED

July 9, 2014
Mr. Randall P. Starr
Chief Development Officer
Topgolf USA, Inc.
1717 McKinney Ave., Suite 800
Dallas, TX 75202

sent via e-mail

Re: Response to Starr Letter, Dated June 24, 2014

Dear Mr. Starr:

The Building Code Enforcement Division (BCE) of Building and Development agreed to conduct a pre-review of Topgolf's purposed project prior to submission for a Building Permit. Topgolf's plans were reviewed in early April and the only major item brought to Topgolf's attention was failure of the plans to comply with the Virginia Uniform Statewide Building Code (USBC), IBC, Section 1013, to provide guards at open-sided walking surfaces. Through the course of two meetings, conference calls, and multiple direct communication with our Plans Review Section (Mr. Steve McCann) BCE has not received a solution to the non-compliance issue.

Through the course of discussion BCE has proffered possible solutions that would be accepted as providing an equivalent degree of safety to that required by the USBC:

- Provide a 42" guardrail at the rear of each tee pad to separate the golfers and the open-sided floor from the "A2 Nightclub" use. This could be a standard rail or could be ornamental, incorporating a bar or dining top.
- QR: Provide a catchment device (net) extending 8' horizontal from the edge of the floor. The 8' requirement, as opposed to the 4' shown on your plans, is to comply with OSHA. The OSHA requirement is the only recognized standard that has been brought to BCE's attention. If ricocheting balls are a concern, provide an energy absorbing netting or material below the catchment net and/or only allow clubs with a high pitch angle to be utilized on the upper level.
- QR: Provide an alternative that provides an equivalent degree of safety for BCE's consideration.
- QR: If Topgolf believes BCE's application of the USBC is incorrect, initiate the appeals process for a determination by the State's Technical Review Board.

Itemized Response to Points Presented in the June 24, 2014 Letter:

1. (Para. #1) Topgolf's solution conforms to a "published standard". BCE is assuming Topgolf is referring to the Tanner evaluation. BCE is not aware, nor has BCE been furnished, any other standard prepared by a nationally recognized organization such as ASTM or ASME. The Tanner evaluation is not a nationally recognized standard.
2. (Exhibit A) Topgolf is requesting approval based on IBC 104.11. The USBC deletes this section however provides USBC Section 106 which allows the Building Official to grant modifications "provided the spirit and functional intent of the code are observed". The functional intent of IBC 1013 is to protect the public from falling off open-sided floor surfaces. The Building Official may consider a "nationally recognized performance code". BCE has not been provided any such standards. A "published" standard does not equate to a "nationally recognized standard".
3. (Exhibit B) The diagram indicating a potential ricochet problem does not address the guard issue.
4. (Exhibit C) Topgolf has listed 17 permitted similar projects. One of BCE's continuing requests has been for Topgolf to explain how other jurisdictions justified not addressing the guard issue. Listing the projects does not explain the "justification".
5. (Exhibit D) The evaluation of Topgolf by the Tanner Consulting Group was submitted to BCE in April. The report is not a nationally recognized standard.
6. (Exhibit F) The Colony Letter. Colony approved the project after looking at the Tanner Report, the trajectory studies, the safety notification program and Topgolf's report of their own safety history. The Colony letter does not address the IBC's requirement for a guardrail.

Topgolf's responses have not changed since April. Topgolf speaks to industry standards, when no nationally recognized standards have been provided.

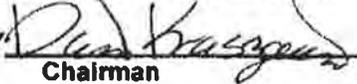
BCE remains available to consider any requests for modifications to the guardrail requirement in USBC Section 1013 that provide an equivalent degree of safety. Until such information is forthcoming the construction plans, as submitted, cannot be approved for permit.

And:

IT IS THEREFORE ORDERED by the Board that a variance to the requirements of Chapter 10, Section 1013.1 of the International Building Code 2009, as adopted by Oklahoma City be granted in accordance with the application filed herein, **PROVIDED**, the applicant submit an Oklahoma engineer's certification letter stating that the proposed netting system will meet the loading and design requirements set forth in OSHA regulation 1926.105 for construction safety netting, **AND FURTHER PROVIDED**, the applicant shall take all necessary steps to have a permit issued by the Director of the Development Services Department within a period of one year from the date hereof, otherwise this Order shall become null and void, unless the issuance of such permit is stayed by an appeal to the appropriate court, and provided further that the applicant comply with all the aforementioned conditions. This Order does not constitute a permit, additionally this order does not waive any requirements of the Americans with Disabilities Act.

Dated this 10th day of September 2014.



BOARD OF APPEALS OF THE CITY OF OKLAHOMA CITY, OKLAHOMA
BY: 
Chairman

ATTEST: 
Clerk

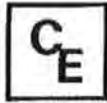
Concurring: Kraszewski, Lombardo, Rocke, White, Wilkerson
Dissenting: McWhirter
Absent: Linn

23. "With regard to this Order by the Board of Appeals of the City of Oklahoma City, Oklahoma, three items are of interest.

24. "The Order grants a variance for one year, during which time certain requirements must be met or the variance 'Order shall become null and void.'

25. "One of those requirements is that 'the applicant must submit an Oklahoma engineer's certification letter stating that the proposed netting system will meet the *loading* and *design* requirements set forth in OSHA regulation 1926.105 for construction safety netting.' [*Italics added.*]

26. "Though the Order required an engineer to certify 'the *loading* and *design* requirements,' the letter apparently submitted for that purpose certifies *only* the *loading* requirements. It fully omits the *design* requirement, and also omits the underlying testing requirement, instead only affirming that 'calculations' show that the system can withstand the structural 'loading.'



CONSULTING ENGINEERS, CORP.

"Your Partner in Structural Engineering"

13C Old Street
Cincinnati, Ohio 45050
PH (513) 229-9000 FAX (513) 380-0109
E-mail: tmitchell@engineer-cec.com

September 18, 2014

RE: Top Golf OKC
Tee Line Net System
Western Ave & Pawnee Drive
Oklahoma City, OK 73013

This letter is to confirm that the fall protection nets and steel beams support framing have been designed for the appropriate code required loading as shown in the calculations.

If there are any further questions regarding this issue please feel free to call our office at your convenience.

Respectfully,

Mr. Tracy Mitchell, PE
Consulting Engineers, Corp.
Midwest Manager



27. "It appears that the engineer, Mr. Tracy Mitchell, insisted on a narrow letter, was unsatisfied with the testing, and that he would only sign after being provided indemnification for doing so:

```
>>>>> On Apr 18, 2014, at 11:35 AM, "Gaw, Mike"
>>>>> <mgaw@arcomurray.commailto:mgaw@arcomurray.com>> wrote:
>>>>> I'd prefer to not have my structural engineer specify for this system.
>>>>>
>>>>> I'll see what he says tho
>>>>> Mike Gaw
>>>>> ARCO/Murray Construction
>>>>> M: 630-815-2772
>>>>>
```

```
>>>> -----Original Message-----
>>>> From: Tracy Mitchell [mailto:tmitchell@engineer-cec.com]
>>>> Sent: Thursday, May 08, 2014 12:47 PM
>>>> To: Gaw, Mike
>>>> Subject: RE: Structural Engineer Design Letter on Tee Line Netting
>>>> System
>>>>
>>>> 500 pounds standing on the concrete pushed over at a few locations
>>>>
>>>>
>>>>
>>>>
>>>> Mr. Tracy S. Mitchell, PE
>>>> Midwest Manager
>>>> Consulting Engineers, Corp.
>>>> 13C Old Street
>>>> Cincinnati, OH 45050
>>>> PH 513-229-9000
>>>> FX 513-360-0109
>>>> CL 513-616-9720
>>>> "Your Partner in Structural Engineering"
```

>>>> Honestly, that test does not meet what we all are stating, and
>>>> gives no additional factor of safety as one would expect
>>>>
>>>> We are testing a 100 year old fire escape on an existing building
>>>> and I am making them load every tread to 150 psf versus code
>>>> required 100 psf
>>>>
>>>>
>>>>
>>>>
>>>>
>>>> Mr. Tracy S. Mitchell, PE
>>>> Midwest Manager
>>>> Consulting Engineers, Corp.
>>>> 13C Old Street
>>>> Cincinnati, OH 45050
>>>> PH 513-229-9000
>>>> FX 513-360-0109
>>>> CL 513-616-9720
>>>> "Your Partner in Structural Engineering"
>>>>
>>>> -----Original Message-----
>>>> From: Gaw, Mike [mailto:mgaw@arcomurray.com]
>>>> Sent: Thursday, May 08, 2014 1:28 PM
>>>> To: Nazario Magana
>>>> Cc: Tracy Mitchell (tmitchell@engineer-cec.com)
>>>> (tmitchell@engineer-cec.com); Dominic Crespo
>>>> (Dominic.Crespo@topgolf.com); Thomas Smiciklas
>>>> Subject: Re: Structural Engineer Design Letter on Tee Line Netting
>>>> System
>>>>
>>>> Dom, do you know why the net were tested to 240 lbs, not 500 per the reports?
>>>>
>>>> Mike Gaw
>>>> ARCO/Murray
>>>> M: 630-815-2772

>>>> -----Original Message-----
>>>> From: Gaw, Mike [mailto:mgaw@arcomurray.com]
>>>> Sent: Thursday, May 08, 2014 1:15 PM
>>>> To: Dominic Crespo
>>>> Subject: FW: Structural Engineer Design Letter on Tee Line Netting
>>>> System
>>>>
>>>> Dom,
>>>>
>>>> Tracy requires a 500 lb test be done to stamp this letter. Let's review on our call
>>>> today.
>>>>

```
>>>> -----Original Message-----
>>>> From: Dominic Crespo [mailto:DominiC.Crespo@topgolf.com]
>>>> Sent: Thursday, May 08, 2014 1:32 PM
>>>> To: Gaw, Mike; Nazario Magana
>>>> Subject: RE: Structural Engineer Design Letter on Tee Line Netting
>>>> System
>>>> Importance: High
>>>>
>>>> Guys...this is getting difficult to manage. (And frustrating) We really need to get
this letter signed and sent out asap. In the attached email sent out by Nazario on 4/30/14,
it listed Aria's requirements to get this letter issued. Problem is...Mike and Tracey were
not copied on that email. One of Aria's requirements stated in this letter is Tracey needing
to sign the Dave Tanner Letter as well as needing to test the nets with 3 - 80lb bags.
Mike...we ran those tests and the results are in Dave Tanner's original letter. Now that
Tracy is coming into the picture with different requirements of his own...What can you do
onsite right now to address the test requirements that Tracey needs to stamp this letter and
get these tests done today? We need to get this letter out ASAP!
>>>>
>>>> Regards,
>>>>
>>>> Dominic Crespo
>>>> Sr. Project Manager
>>>> TopGolf
>>>> p: 972.730.7536
>>>> f: 214.819.0351
>>>> 1717 McKinney Ave.
>>>> Suite #800
>>>> Dallas, TX 75202
>>>> TopGolf.com
>>>>
>>>> TopGolf The Blog
>>>>
```

```
>>>> On May 9, 2014, at 8:10 AM, "Gaw, Mike" <mgaw@arcomurray.com> wrote:
>>>>
>>>> Dom, talked with Tracy. I need the updated letter that doesn't reference the testing.
When do you expect that? Since it wasn't tested to 500 lbs which the documentation requires,
he will need that in order to sign. I'm still reviewing the indemnification language as well.
>>>>
>>>>
>>>> We moved! Our address and phone numbers have changed; click the vCard link below to
update your records.
>>>>
>>>> Mike Gaw
```

And:

>>> -----Original Message-----
>>> From: Gaw, Mike [mailto:mgaw@arcomurray.com]
>>> Sent: Friday, May 09, 2014 9:06 AM
>>> To: Dominic Crespo
>>> Cc: Nazario Magana
>>> Subject: RE: Structural Engineer Design Letter on Tee Line Netting
>>> System
>>>
>>> Please re-send. I don't have a copy of it
>>>
>>> Tracy won't require the test, but he is requiring the
>>> indemnification language from Topgolf. Has this been written up
>>>
>>>
>>> We moved! Our address and phone numbers have changed; click the vCard link below to
update your records.
>>>
>>> Mike Gaw
>>>
>>> ARCO MURRAY | DESIGN BUILD
>>> 3110 Woodcreek Drive | Downers Grove, IL 60515
>>> o: 331.251.2726 | d: 331.251.2689 | m: 630.815.2772 vCard |
>>> www.arcomurray.com

28. “The Defendant Architects designed the tee line area and fall-arrest safety netting system. The Defendant Architects also undertook to perform services that its employees knew, or should have known, were necessary for the protection of members of the public, such as the Plaintiff, who were expected to visit TopGolf.

29. “Based on my education, training, professional experience, and review of the information provided to me, it is my professional opinion that the tee line area and fall-arrest safety netting system, as designed and as it existed on August 25, 2013, was unreasonably dangerous to the general public and to the Plaintiff. The Defendant Architects’ conduct in developing, approving, designing, assessing, and documenting the tee line area and fall-arrest safety netting system fell below the applicable work product standards of design professionals in Texas.

30. “The primary responsibility of the Defendant Architects, just as it is for all architects in the United States, is the health, safety and welfare of human life. ‘An Architect shall not practice architecture in any manner which, when measured by generally accepted architectural standards or procedures, is reasonably likely to result or does result in the endangerment of the safety, health, or welfare of the public.’ 22 TEXAS ADMINISTRATIVE CODE § 1.143(a). ‘The purpose of [requiring registration as an architect] ...(a) is to (i) safeguard life, health, property, and the public welfare....’ TEXAS OCCUPATIONS CODE, § 1051.0015. The tee line area and fall-arrest safety netting system do not meet acceptable standards. Further, a system that appears to meet acceptable standards but doesn’t perform accordingly, creates the added danger of a false sense of security. An airbag that does not deploy correctly. A seatbelt that detaches. A safety net that does not prevent falls. The user is deprived of the information needed to evaluate the safety provided and the risks presented. The decisions and behaviors of the users are not what they would be if they were informed. How many parents would still let their children play at the deck edge if there was

no net at all? How many would let their children play if they knew that the fall-arrest safety netting system was less than half of the width of the standard and that it had never been properly tested? The user is relying on misleading information.

31. "The Defendant Architects were knowledgeable, or should have been knowledgeable, of the need to exercise reasonable care in designing the tee line area and fall-arrest safety netting system given the risks of serious physical harm to those persons intended to be protected by the design.

32. "Additionally, the Defendant Architects had a duty to warn its clients of the standards and the risks. If they failed to do so, this was a breach of their duty.

33. "It is my professional opinion that the errors and/or omissions listed above constitute negligence, in that the Defendant Architects failed to exercise that degree of care which would have been exercised by a reasonably prudent architect and architectural firm under the same or similar circumstances. The Defendant Architects also failed to meet the applicable work product standards of design professionals with regard to the design of the tee line area and fall-arrest safety netting system in a manner that safely accommodates the use for which the property was intended.

34. "My investigation is ongoing, and further examinations of the case-related documents may lead to the discovery of additional errors and/or omissions in the work performed by the Defendant Architects. As a result, I reserve the right to supplement and/or expand my opinions and conclusions with respect to the performance of the Defendant Architects."

Further affiant sayeth naught.


Robert A. Plichta

SUBSCRIBED AND SWORN TO before me by the said Robert A. Plichta, on this 21st day of August, 2015, to certify which witness my hand and seal of office.


Notary Public in and for
The State of Illinois

My Commission Expires:



Exhibit B



4215 Campus Drive
Aurora, IL 60504

**ROBERT A. PLICHTA, AIA, NCARB, CPP, RID
SENIOR CONSULTANT / FORENSIC ARCHITECT**

Cell: (847) 997-1804
raplichta@esi-il.com

Mr. Plichta specializes in the investigation, evaluation and repair of building failures, architectural standard of care, slip and fall investigations and accessibility compliance. He is also an expert in national building code compliance, architectural operations, construction contract administration and peer reviews. His more than thirty years of architectural experience of building types including: commercial, hospital, educational, industrial, medical clinics, hospitality, retail facilities, multi-family residential (condominiums and apartment) complexes, mixed use projects, senior living, hi-end residential and urban infill residential design and construction. His expertise also includes ADA design, review and assessment for compliance on projects; and involved in the review and assessment of loading dock design, and dock levelers. He holds an OSHA certification, is the author and facilitator of numerous courses on Project Management, Construction Contract Administration, Best Practices and technical publications; and has also trained and mentored professionals throughout the country. He is also knowledgeable and experienced with structural systems, building foundation systems, plumbing, HVAC systems along with fire science applications.

Mr. Plichta is on the Board of Directors (NEI-AIA) and a member of the American Institute of Architects, International Project Management Association, International Code Council and National Institute of Building Sciences. He has lectured throughout the United States on Accessibility in the Multi-Family industry for the Department of Justice.

Areas of Specialization

Construction Defects Investigation	Litigation Support & Testimony
Building Code Analysis	Building Envelope Investigation
Accessibility Compliance	Damage Assessment
Standard of Care Analysis	Damage Repair Design
Architectural Design Analysis	Construction Safety

Education

Bachelor of Architecture
University of Illinois - Chicago, 1982

Licenses

Registered Architect

State of Illinois, 001-018822
State of Wisconsin, 9600-5
State of Pennsylvania, RA405526
State of Florida, AR95852
State of South Carolina, AR 8506
State of Texas, 22534
State of Iowa, 06531
State of Arkansas, 4772
State of Nebraska, A4471
State of Indiana, AR11500115
State of Colorado, ARC.00404017
NCARB, 71608

Registered Interior Designer

State of Illinois, 161003474

www.esi-website.com

Phone: (630) 851-4566 v Fax: (630) 851-4870

July 2015

Training and Certification

National Council of Architectural Registration Boards (NCARB)

American Society for the Advancement of Project Management (asapm)

International Project Management Association (IPMA)
Certified Project Practitioner (CPP)

Office of the Illinois State Fire Marshal (OSFM) (former)
Firefighter I
Firefighter II
EMT-B

Safety Training
OSHA 30 Hour Construction Course

Construction Safety Council
Supported-Suspended Scaffold User

Governor's Office of Emergency Services (CalOES – California)
Disaster Response Certification

Professional Affiliations

American Institute of Architects (AIA)
Member, Board of Directors, Northeastern Illinois (NEI) AIA
January 2014 to present

National Council of Architectural Registration Boards (NCARB)

International Project Management Association (IPMA)

American Society for the Advancement of Project Management (asapm)

American Institute of Steel Construction (AISC)

National Institute of Building Sciences (NIBS)

Community Associations Institute (CAI)

Positions Held

Engineering Systems, Inc., Aurora, Illinois
Senior Consultant / Architect
2011 – Present

Packer Engineering, Inc., Naperville, Illinois
Director – Construction Technology Group
2009 – 2011

BSB Design, Inc., Palatine, Illinois
National Director – Multifamily
2005 – 2008

RP Architecture, Libertyville, Illinois
President
2001 – 2005



KLLM Architects, Inc., Chicago, Illinois
Director of Operations
1998 - 2001

College of Lake County, Grayslake, Illinois
Adjunct - Architectural Technology Program
1993 - 1998

Libertyville Fire Department, Libertyville, Illinois
Firefighter II, EMT-B
1992 - 1997

Matthias Jans and Associates, Inc., Palatine, Illinois
Senior Project Manager
1991 - 1998

Legat Architects, Inc., Waukegan, Illinois
Project Manager
1990 - 1991

Lindquist & Associates, Hawthorn Woods, Illinois
Associate
1989-1990

General Binding Corporation, Inc., Northbrook, Illinois
Director
1984 - 1989

Northern Telecom, Inc., Morton Grove, Illinois
Mechanical Design/CAD Manager
1982 - 1984

Extel Corporation, Inc., Northbrook, Illinois
Electronic Technician/Design Engineer
1975 - 1982

Glenview Park District Golf Course, Glenview, Illinois
Assistant Manager
1972 - 1981

Technical Publications

"Business Development Training Program"
BSB Design, Inc., Palatine, Illinois
May 2007

"Advanced Project Management Strategies"
BSB Design, Inc., Palatine, Illinois
July 2007

"BSB Technical Publications"
BSB Design, Inc., Palatine, Illinois
January 2006 - June 2007



- “BSB Best Practices Publications”
BSB Design, Inc., Palatine, Illinois
January 2006 – June 2007
- “Project Management I Training Program”
BSB Design, Inc., Palatine, Illinois
April 2006
- “Building Code Analysis for Architects”
BSB Design, Inc., Palatine, Illinois
June 2006
- “Zoning Code Analysis for Architects”
BSB Design, Inc., Palatine, Illinois
July 2006
- “Life Safety Code Analysis for Architects”
BSB Design, Inc., Palatine, Illinois
July 2006
- “Project Management I & II Training Programs”
BSB Design, Inc., Palatine, Illinois
August 2006
- “Understanding the Requirements of NFPA 82 – Waste Handling Systems”
BSB Design, Inc., Palatine, Illinois
September 2006
- “Understanding the Requirements of NFPA 101 – Life Safety Code”
BSB Design, Inc., Palatine, Illinois
October 2006

Teaching and Technical Presentations

- “Good Access is Good Business”
Multi-Family Housing Access Forum
Department of Justice, Minneapolis, Minnesota, May 2007
- “Good Access is Good Business”
Multi-Family Housing Access Forum
Department of Justice, Miami, Florida, November 2007
- “Animation in Architecture”
AEC Convention, Anaheim, California, 1991
- “Architectural Working Drawings”
College of Lake County, Grayslake, Illinois, 1993 – 1998
- “AutoCAD in the Architect’s Office”
College of Lake County, Grayslake, Illinois, 1993 – 1998
- “Basic Drafting for Architectural Applications”
College of Lake County, Grayslake, Illinois, 1993 – 1998

